IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 29120 of 2007(N)

OS.223/2001 of ADDL.SUB COURT,PARAVUR
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PETITIONERS:
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1. **THE DEITY VISHNUMAYA KSHETHRAM,**
   MALIANKARA KARA, MOOTHAKUNNAM VILLAGE,
   A MINOR JUDISTRIC PERSON REPRESENTED BY SANTHOSH,
   S/O. NARAYANAN, AGED 44 YEARS, KOTTUVALLIKKATTU
   KARA, MOOTHAKULAM VILLAGE, PARAVUR TALUK,
   ERNAKULAM DISTRICT.

2. **SANTHOSH, S/O. NARAYANAN, AGED 44 YEARS,**
   KOTTUVALLIKKATTU KARA, MOOTHAKULAM VILLAGE,
   PARAVUR TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENTS:
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1. **SARGEES, S/O. ITTIMANI,**
   KOCHAKKAL, PARAVOOTHARA MURI, PARAVUR VILLAGE,
   PARAVUR TALUK.

2. **KOCHUNNI, S/O. IKKERAN,**
   PUTHENPURACKAL, MALIANKARA KARA, PARAVUR TALUK.

3. **SUNIL KUMAR, S/O. BALAN,**
   CHARAKKATTU, MALIANKARA KARA, MOOTHAKUNNAM
   VILLAGE, PARAVUR TALUK.

4. **PRAKASAN,**
   PUTHENPURACKAL HOUSE, MALIANKARA KARA,
   MOOTHAKUNNAM VILLAGE, PARAVUR TALUK.

**5. PRASAD, S/O. KALATHIPARAMBIL VASUDEVAN,
MALIANKARA KARA, MOOTHAKUNNAM VILLAGE,
PARAVUR TALUK.**

**6. SADHANANDAN,
PRESIDENT, KERALA KSHETHRA SAMRAKSHANA SAMITHI,
MALIANKARA UNIT.**

BY ADV. SRI.DINESH R.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.29120/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. 23/01.

EXT.P2:- COPY OF THE INTERLOCUTORY APPLICATION FILED AS IA. 2924/07 BEFORE THE HONOURABLE ADDITIONAL SUB COURT PARAVOOR.

EXT.P3:- COPY OF THE COUNTER FILED BY THE IST RESPONDENT TO THE INTERLOCUTORY APPLICATION IA. 2924/07.

EXT.P4:- COPY OF THE COMMISSION REPORT DT. 30.5.01 FILED BY THE ADVOCATE COMMISSIONER.

EXT.P5(a) TO P5(c):- COPY OF THE EXTRACT OF THE ASSESSMENT REGISTERS FOR THE PERIOD 1977-78 TO 1992-93 (QUINQUENNIAL ASSESMENT 3 NUMBERS.)

EXT.P6:- COPY OF THE ORDER IN IA. 2924/07 DT. 4/9/07 PASSED BY HONOURABLE ADDITIONAL SUB COURT, PARAVOOR

EXT.R1(a):- COPY OF THE JUDGMENT IN EFA. N O.13/01, HIGH COURT OF KERALA.

EXT.R1(b):- COPY OF THE ORDER IN IA. NO.1043/01 IN OS. NO.347/01, MUNSIFF COURT, NORTH PARAVOOR.

EXT.R1(c):- COPY OF THE ORDER DT. 25.1.06 IN IA. NO.224/06 IN EX.FA. 3/06, HIGH COURT OF KERALA.

EXT.R1(d):- COPY OF THE ORDER DT. 25.1.06 IN CRP. NO.671/02, HIGH COURT OF KERALA.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.29120 OF 2007

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Dated this the 29th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Addl.Sub Court, N.Paravur in I.A.No.2924 of 2007 in O.S.No.223/2001 whereby he had dismissed the application for issuance of a Commission. The plaintiff in the suit has moved Ext.P2 application for issuance of a Commission with 5 points to be noted. The first point is to identify and measure out the plaint schedule property described in the plaint,(2) whether the property inspected on 25.5.2001 is the same as the property scheduled in the suit, (3) whether the building mentioned in Exts.A2(a) to A2(c) and the assessment register is the temple belonging to the 1st plaintiff housing the Vishnumaya Deity's idol,(4) whether the plaint schedule property is having well defined boundaries, fence/compound, etc. and (5) to note and record such other matters as the plaintiff or his counsel may require to be noted. So far as the first two points are concerned, already, a Commissioner has visited the property and had submitted a sketch and report and the other side also does not have any objection in admitting that the Commissioner has visited the

very same property. So, the point that requires consideration is regarding the building mentioned in Exts.A2(a) to A2(c). Learned counsel for the petitioners submits before me that if a Commission is issued with the help of a building Inspector, he will be able to identify the same and put proper materials before the court. I am afraid such a course cannot be adopted. But Exts.A2(a) to A2(c) are documents which will show that there is a temple in Ward No.440 and House No.428. Ext.A2(b) would show that the new number is 522 and the owner is the temple and it is a tiled building. Ext.A2(c) would show that the new number is 684 and the old number is 512 and the name of the owner is Ekkoran Kochunni and it is described as his temple. Learned counsel would submit that everything depends upon the proof or identity of the temple in relation to the period of its existence which will have a tell tale effect for a decision in this case. Ordinarily, the method to be adopted in such cases is to examine the authorities who had prepared the assessment and prove through them. An inspection by the competent authorities is necessary for renumbering and assessing the property. I am informed by the learned counsel for the petitioners that though he had examined the Secretary, his evidence has not been very helpful as he is a person new to the job. There are now relevant documents produced before the court. What is required is to connect the documents

with the contention. At the most what can be done by the court is to direct the Commissioner to go to the property, find out the temple which is not disputed by both sides and thereafter find out what is the number of that building, where the temple is located and if there are old numbers on the temple premises that will also be taken into consideration and reported so that there will be some piece of evidence which will help the party to link the documents which the factual matrix available on this aspect. I feel a Commission can be issued for the limited purpose.

Therefore, the order under challenge is set aside and Advocate Sri.M.S.Bhasi be appointed as Commissioner to inspect the premises and the building and report about the existence of the same and also note down the present number of the building and if old numbers are available that also may be noted and submit a report. Thereafter the writ petitioners are at liberty to link the facts submitted by the Commissioner with the documents and in case of necessity, he be permitted to examine the witnesses for that purpose. Needless to say that the expenses for the Commissioner has to be met with by the plaintiff and for the time being and ultimately it will abide by the result of the suit. If respondents want to note the particulars in

relation to the matters which I direct the Commissioner to know that also may be noted.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-